Supreme Court, U. S.
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No. 79-1848

IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

RETAIL STORE EMPLOYEES UNION, LOCAL NO. 919; ARNALDO F. ESPINOSA, *et al.*,
Petitioners,

v.

UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION; WILLIAM H. WYNN, *et al.*,
Respondents.

PETITIONER'S REPLY TO BRIEF IN OPPOSITION

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1. Respondents' attack upon and misrepresentation of the findings of the District Court, approved below (Cf. Opp. 4, 5, 7, 8, 12, 15, 16 with Pet. 5-10), (*e.g.*, "there is no evidence of there being a discriminatory, illegally motivated audit in this case" (Opp. 16); "no evidence of subjective intent to discriminate" (Opp. 13), both *contra* findings (Pet. 5-10); "the District Court [assertedly] *could have* justifiably *concluded* * * * [but did not (Pet. 6-7)] that an audit would have been conducted regardless of the existence of hostility" (Opp. 8, emphasis added)), are barred by the "two-court" rule. *Berenyi* v. *Immigration Director*, 385 U.S. 630, 635, 636 (1967); *Mills* v. *Electric Auto-Lite*, 396 U.S. 375, 381 n. 4

(1970); Stern & Gressman, *Supreme Court Practice*, 290-291 (5th ed., 1978).[1]

2. This assault aside, the Opposition confirms that the underlying issue is whether the possibility that a discriminatory, illegally motivated, audit may turn up evidence of wrongdoing exempts such audits from the Congressional prohibition and policy (Pet. 17-18), against discriminatory, illegally motivated, parent body interference with local autonomy.[2] Respondents' argument that

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[1] Respondents' assertion (Opp. 5), that "Petitioners seriously misrepresented the significance of the [interim] report" (at Pet. 11, n. 9), is wholly unwarranted. The report does not even refer to the rumored "diver[sion of] union assets to pay personal entertainment expenses for [Espinosa] and female companions" (Opp. 2, 5) or to the allegedly "unusually high expenditures for printing, promotional items, and liquor" (*id.*, 2). The assumption of the interim report, reflected in the Opposition 2-3, 5, 6-7, 8, 12-13, 14, that Espinosa's routine union business expenditures were wrongfully "undocumented" or "inadequately documented" and that this plus the relative handful of so called "double billings" is "evidence of financial irregularities" (Opp. 14) flouts the contrary findings of the courts below (Pet. 8, 14a-17a).

[2] Respondents' attempt to emasculate *Parks* (Opp. 12), which they erroneously attribute to the Second Circuit, by burying its significance beneath irrelevancies (*id.*, 11-12), is as disingenuous as their invocation of *Vestal* v. *Teamsters* (*id.*, 11) for the proposition that "the 'spirit' of the LMRDA may [not] be invoked to invalidate union constitution provisions." The Court of Appeals reversed in *Vestal* because it found no support for the district court's assumption that failure to provide for submission of amendments to rank and file members violated "the spirit of" the Act (LMRDA "authorizes a representative system of government and does not require a town meeting for action by an international or national union" (*Musicians Federation* v. *Wittstein*, 379 U.S. 171, 182 (1964)), not because a constitutional provision which violates "the spirit of the LMRDA but not necessarily its language" (Opp. 11), is immune.

proof of discrimination and illegal motivation should not constitute a defense because to allow it would *pro tanto* de-"maximize the potential exposure of corruption or financial malpractice" (Opp. 10, 14), confirms petitioners' perception of the rationale behind the holdings below (Pet. 19).

If searches for financial wrongdoing are "entirely harmless", as respondents would have it (Opp. 10), why do authorities use them against their enemies?[3] If the law prohibits even public officials from conducting audits and other financial investigations in bad faith (Pet. 19-20), despite the adverse impact of that prohibition on potential exposure of wrongdoing, how can it sanction bad faith audits by parent body union officials? That Congress authorized good faith audits (Opp. 13-14) cannot, even by the remotest stretch of imagination, imply that it authorized bad faith ones.[4] *Local No. 1 (ACA), Etc.* v. *I.B.T., C., W. & H.*, 419 F. Supp. 263, 272-73 (E.D. Pa., 1976), affd. on other issues, 614 F.2d 846 (3 Cir., 1980), applying the teachings of *Scofield* v. *NLRB*, 394

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[3] See, *e.g.*, Berry, *Tax Audit for Civil Rights: The IRS Bullies the New South*, The Nation, March 6, 1976, p. 269.

[4] Precisely in point is this Court's holding in *United States* v. *Powell*, 379 U.S. 48, 58 (1964):

> "Nor does our reading of the statutes mean that under no circumstances may the court inquire into the underlying reasons for the examination. It is the court's process which is invoked to enforce the administrative summons and a court may not permit its process to be abused [footnote omitted]. *Such an abuse would take place if the summons had been issued for an improper purpose, such as to harass the taxpayer or to put pressure on him to settle a collateral dispute, or for any other purpose reflecting on the good faith of the particular investigation.*" (Emphasis added.)

U.S. 423, 429-430 (1969) and *Gomillion* v. *Lightfoot*, 364 U.S. 339, 347 (1966), to LMRDA. Respondents' failure to address this crucial question (Opp. 13), like that of the courts below, emphasizes the necessity of its resolution by this Court.

Respectfully submitted,

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